

**(2009) 02 P&H CK 0187**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Regular Second Appeal No. 1866 of 1994

Jarnail Singh

APPELLANT

Vs

Punjab State Agricultural

RESPONDENT

Marketing Board and Others

**Date of Decision:** Feb. 3, 2009

**Hon'ble Judges:** Arvind Kumar, J

**Bench:** Single Bench

**Final Decision:** Dismissed

**Judgement**

Arvind Kumar, J.

This second appeal by defendant No. 3, Jarnail Singh, is directed against the judgment and decree of the Courts below decreeing the suit of the plaintiff for declaration.

2. Plaintiff filed suit for declaration stating therein that he was working as Auction Recorder in the Market Committee, Sangrur, after having been appointed as such on 22.4.1977. Defendant No. 3, Jarnail Singh, was also working as Auction Recorder in the said Market Committee earlier to him. Later on, a new committee was created at Cheema and for that, some employees were to be allocated to Market Committee, Cheema, by the Board. Defendant No. 3, Jarnail Singh, was allocated to Market Committee, Cheema, by the defendant-Board vide order dated 13.10.1982 on his own request and he had been working as Auction Recorder in Market Committee, Cheema since then. It was stated that later on, two posts of Mandi Supervisors were created in Market Committee, Sangrur, which had to be filled by promotion from amongst the Auction Recorders of Market Committee, Sangrur. According to the plaintiff, he being the senior-most Auction Recorder in Market Committee, Sangrur, was due to be promoted as Mandi Supervisor but in order to give defendant No. 3, Jarnail Singh, the undue benefit and to promote him as Mandi Supervisor, the defendant-Board vide order dated 18.6.1986 transferred him from Market Committee, Cheema to Market committee, Sangrur while the plaintiff was

transferred from Market Committee, Sangrur to Market Committee, Cheema. After defendant No. 3 Jarnail Singh joined at Market Committee, Sangrur, he was promoted as Mandi Supervisor vide order dated 26.6.1986. This led to filing of the present suit by the plaintiff. Upon notice of the suit, defendants 1 and 2, namely, Punjab State Agricultural Marketing Board, Chandigarh, and Market Committee, Sangrur, respectively filed written statement, thereby justifying their stand in promoting defendant No. 3 Jarnail Singh instead of the plaintiff. A separate written statement was filed by defendant No. 3, Jarnail Singh. Thereafter, the parties led their respective evidence. Trial Court on appreciation of evidence so adduced, vide judgment and decree dated 28.3.1990, decreed the suit of the plaintiff after setting aside order dated 18.6.1986 transferring the plaintiff from Market Committee, Sangrur, to Market Committee, Cheema and bringing back defendant No. 3 Jarnail Singh from Market Committee, Cheema, to Market Committee, Sangrur, and as a consequence thereof, further set aside order dated 26.6.1986 promoting defendant No. 3 Jarnail Singh(appellant herein) as Mandi Supervisor thereby directing the defendant-Board to consider the plaintiff for promotion as Mandi Supervisor as per rules. Defendants 1 and 2, i.e. the department did not challenge the judgment and decree of the trial Court. Defendant No. 3 Jarnail Singh filed an appeal which was dismissed by the first appellate Court thereby affirming the findings of the trial Court. Hence, the present second appeal by defendant No. 3.

3. Counsel for the parties have been heard.

4. It has come on record that defendant No. 3, Jarnail Singh, was already working as Auction Recorder in Market Committee, Sangrur, prior to creation of Market Committee, Cheema, in the year 1982. Both the Courts below while decreeing the suit of the plaintiff have concurrently observed that when in the year 1982 both plaintiff Ashok Kumar and defendant No. 3, Jarnail Singh gave an option for allocation to Market Committee, Cheema, only the request of defendant No. 3 was accepted and he was allocated to Market Committee, Cheema and therefore, the defendants could not lend legality or validity to their orders passed on 18.6.1986 after relying upon the option of the plaintiff given in the year 1982 so as to allocate him to Market Committee, Cheema. It was held that order dated 18.6.1986 was actually an order of transfer of defendant No. 3 from Market Committee, Cheema to Market Committee, Sangrur, and not the order of cancellation of his allocation and that order of allocation dated 13.10.1982 passed by the defendant-Board allocating defendant No. 3 Jarnail Singh to Market Committee, Cheema, were final and irrevocable thereby bringing to an end all connections of defendant No. 3 with Market Committee, Sangrur. No provision of law was produced by the defendants under which allocation of an employee from one Committee to another could be reopened at any point of time merely on wish of the official himself or as per desire of the Chairman of the Board. It has been admitted by defendant No. 3 Jarnail Singh in his cross-examination that on his option, he was allocated to Market Committee, Cheema. The Courts below have further observed that it is only when two posts of

Mandi Supervisor were created in Market Committee, Sangrur, to be filled from amongst the Auction Recorders, that defendant No. 3, Jarnail Singh filed an appeal/representation against his rejection which was rejected by the Secretary of the Board but however, another representation was filed by him which was accepted by the Chairman of the Board vide impugned order dated 18.6.1986 and he was retransferred to Market Committee, and immediately thereafter, on his joining, he was promoted as Mandi Supervisor. Such an action of the defendants was totally contrary to their own letter dated 12.5.986, Exhibit P-2, according to which it had been clarified that the employees who were transferred from Market Committee, Cheema, their parental committee would be Cheema and not Sangrur. Further more, as per defendant-Board's own circular letter dated 30.4.1982 (produced by the plaintiff as Exhibit P-1) wherein the practice of transfer of the officials of one Market Committee to another Market Committee so as to give them undue advantage for their promotions, was deprecated and it was ordered that the officials of one Market Committee be not transferred to another Market Committee as this affected their subsequent scope of promotion and service conditions. No document worth the name has been produced on record by the defendant No. 3 to show that when he was transferred from Market Committee, Sangrur to Market Committee, Cheema during the year 1982, his lien was retained in the Market Committee, Sangrur. Defendant No. 3 himself having opted for being posted as Auction Recorder in Market Committee, Cheema, cannot now be allowed to turn around and say that his posting at Cheema was a temporary arrangement. As a matter of fact, by such option, he had foregone all his claims of seniority and promotion in the Market Committee, Sangrur and his allocation to the Market Committee, Cheema, was final and irrevocable. Thus, he could not have been allowed to get himself transferred from Market Committee, Sangrur, in place of plaintiff, only for the purpose of getting promotion as Mandi Supervisor, thereby depriving the plaintiff of his rightful claim. Nothing has been shown that the findings of fact so recorded by the Courts below suffer from any infirmity or are contrary to the record. No question of law, much less substantial, arises in the present appeal.

5. Consequently, the appeal being without any merit is hereby dismissed.